

Introduced by Senator DeSaulnier
(Coauthor: Senator Vargas)
(Coauthor: Assembly Member Hueso)

February 24, 2012

An act to add Division 3.5 (commencing with Section 28960) to Title 4 of the Corporations Code, relating to business investment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1467, as introduced, DeSaulnier. Business investment: tax credits.

Existing law imposes a gross premiums tax on insurers in lieu of other taxes, with certain exceptions. Existing law provides for credits against tax liability for certain taxpayers meeting various requirements. The Capital Access Company Law provides for licensing and regulation by the Commissioner of Corporations of capital access companies, which provide risk capital and management assistance to business entities.

This bill would enact the California Capital Access Company Credit Act, which would provide an investment tax credit against insurer premium tax liability to participating investors, as defined, and would provide for sale or transfer of the tax credits to other parties. The bill would provide for a maximum amount of tax credits of \$200,000,000, which could be claimed over specified tax years and carried forward until tax year 2037. The bill would provide for the Business, Transportation and Housing Agency to, among other things, qualify applicants as qualified capital access companies, which would receive investment commitments from participating investors and make qualified investments in qualified businesses, subject to approval by the agency. The bill would specify the process for qualified distributions to be made by the qualified capital access company to private investors and the state, with the state share to be deposited in the General Fund or in the

Economic Development Fund, which would be created by the bill, as specified. The bill would provide for certain application and certification fees, and impose certain penalties, and provide for these revenues to be deposited in the Economic Development Fund. The bill would define various terms for purposes of the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 3.5 (commencing with Section 28960)
2 is added to Title 4 of the Corporations Code, to read:

3
4 DIVISION 3.5. CALIFORNIA CAPITAL ACCESS
5 COMPANY CREDIT ACT
6

7 28960. This division shall be known and may be cited as the
8 California Capital Access Company Credit Act.

9 28961. As used in this division:

10 (a) (1) "Affiliate" means either of the following:

11 (A) Any person who, directly or indirectly, beneficially owns,
12 controls, or holds power to vote 15 percent or more of the
13 outstanding voting securities or other voting ownership interest of
14 a qualified capital access company or insurance company.

15 (B) Any person, 15 percent or more of whose outstanding voting
16 securities or other voting ownership interests are directly or
17 indirectly beneficially owned, controlled, or held with power to
18 vote by a qualified capital access company or insurance company.

19 (2) Notwithstanding anything in this subdivision, an investment
20 by a participating investor in a qualified capital access company
21 pursuant to an allocation of investment tax credits under this section
22 does not cause that qualified capital access company to become
23 an affiliate of that participating investor.

24 (b) "Allocation amount" means the total amount of tax credits
25 allocated to the participating investors in a qualified capital access
26 company pursuant to this division.

27 (c) "Allocation date" means the date on which investment tax
28 credits under Section 28964 are allocated to the participating
29 investor of a qualified capital access company under this division.

(d) “Base investment amount” means fourteen million dollars (\$14,000,000) in the case of a qualified capital access company receiving one allocation of tax credits and twenty-eight million dollars (\$28,000,000) in the case of a qualified capital access company receiving two allocations of tax credits, which shall be available in cash or cash equivalents immediately following the investment by a qualified capital access company’s participating investors and its owners; provided, however, that a contract for payment of cash or cash equivalents over a specified period of time shall also be sufficient.

(e) “Capital access company” means a venture capital fund licensed by the Department of Corporations under the Capital Access Company Law (Division 3 (commencing with Section 28000)).

(f) “Designated capital” means an amount of money that is invested by a participating investor in a qualified capital access company.

(g) “Distributable cash” means the excess of the sum of all cash receipts of all kinds over cash disbursements for operating expenses and qualified distributions, or reserves therefor. The general partner may, at its sole discretion, retain reasonable amounts for working capital and reserves for contingencies and reasonably foreseeable obligations.

(h) “Investment period” means the period January 1, 2013, to December 31, 2021, inclusive.

(i) “Participating investor” means any insurance company required to pay the gross premiums tax pursuant to Part 7 of Division 2 (commencing with Section 12001) of the Revenue and Taxation Code that contributes designated capital pursuant to this division.

(j) “Percentage interest” means, with respect to a private investor, the ratio of the private investor’s capital contribution to the total capital contributions of all private investors, as adjusted from time to time.

(k) “Person” means a natural person or an entity, including, but not limited to, a corporation, general or limited partnership, trust, or limited liability company.

(l) “Private investor” means any investor in a capital access company other than a participating investor or the manager of a capital access company.

(m) “Profit share percentage” means allocation of distributable cash as provided in Section 28968.

(n) (1) “Qualified business” means a business that is independently owned and operated and meets all of the following requirements:

(A) It is headquartered in California, its principal business operations are located California, and at least 60 percent of its employees are located in California.

(B) It has not more than 100 employees.

(C) It is not principally engaged in professional services provided by accountants, doctors, or lawyers; banking or lending; real estate development; insurance; oil or gas exploration; or direct gambling activities.

(D) It is not a franchise of, and has no financial relationship with, a qualified capital access company or any affiliate of a qualified capital access company prior to a qualified capital access company’s first qualified investment in the business; provided, however, that if it continues to fulfill its fiduciary duty to the program established by this division, then the business may be one in which the qualified capital access company, its affiliates, or a separate fund managed by the managers of the capital access company was invested prior to the allocation of investment tax credits to the capital access company; and provided, further, that if the qualified capital access company continues to fulfill its fiduciary duty to the program established by this division, then the business may be one in which a separate fund managed by the managers of the qualified capital access company makes an investment after the investment by the qualified capital access company.

(2) (A) The requirements of paragraph (1) may, in the alternative, be met if the qualified capital access company represents in its application for funding approval that the business will, in the definitive purchase agreements to be executed upon closing, agree to both of the following:

(i) Commence locating its headquarters, its principal business operations, and at least 60 percent of its employees in California.

(ii) Complete all of the required elements of paragraph (1) within 12 months after closing.

(B) If the business fails to fulfill the commitments specified in subparagraph (A), the Secretary of Business, Transportation and

1 Housing may, in the secretary's sole discretion, impose a penalty
2 on the qualified capital access company. Notwithstanding anything
3 in this subdivision, the penalty shall be imposed such that the profit
4 share percentage, as otherwise defined in Section 28968, shall be
5 amended such that the profit share percentage distributed to the
6 state by the qualified capital access company shall equal 80 percent
7 of any distributions arising from the qualified capital access
8 company's investments, other than qualified distributions or
9 distributions or repayments of capital contributions by the qualified
10 capital access company's equity owners who are not participating
11 investors.

12 (3) A business classified as a qualified business at the time of
13 the first qualified investment in the business shall remain classified
14 as a qualified business and may receive continuing qualified
15 investments from any qualified capital access company; provided,
16 however, that the business continues to meet the requirements of
17 paragraph (1).

18 (o) "Qualified capital access company" means a qualified capital
19 access company that has been approved to receive an investment
20 tax credit allocation.

21 (p) "Qualified distribution" means any distribution or payment
22 by a qualified capital access company other than pursuant to a
23 profit allocation in connection with any of the following:

24 (1) Costs and expenses of forming, syndicating, and organizing
25 the qualified capital access company, including fees paid for
26 professional services; provided, however, that startup costs shall
27 not exceed 2 percent of the total capital of the capital access
28 company or five hundred thousand dollars (\$500,000).

29 (2) An annual management fee to offset the costs and expenses
30 of managing and operating a qualified capital access company;
31 provided, however, that in the first four years following its
32 allocation date, a qualified capital access company's management
33 fee shall not exceed 2 percent of its base investment amount per
34 annum and in the fifth to 10th years, inclusive, following its
35 allocation date, a qualified capital access company's management
36 fee per annum shall not exceed 2 percent of the lesser of its base
37 investment amount or its qualified investments.

38 (3) Reasonable and necessary fees in accordance with industry
39 custom for ongoing professional services, including, but not limited
40 to, legal and accounting services related to the operation of a

1 qualified capital access company, not including any lobbying or
2 governmental relations; provided, however, professional service
3 fees shall not exceed two hundred thousand dollars (\$200,000)
4 annually.

5 (4) An increase or projected increase in federal or state taxes
6 of the private investors of a qualified capital access company
7 resulting from the earnings or other tax liability of a qualified
8 capital access company to the extent that the increase is related to
9 the ownership, management, or operation of a qualified capital
10 access company; provided, however, that those distributions shall
11 not exceed that actual tax liability due and payable on that
12 investor's actual return. Documents supporting the payments shall
13 be provided to the Franchise Tax Board upon request.

14 (q) "Qualified investment" means the investment of cash by a
15 qualified capital access company in a qualified business for the
16 purchase of equity, equity options, warrants, or debt convertible
17 to equity. An investment by a qualified capital access company in
18 a debt instrument whose terms are substantially equivalent to terms
19 typically found in debt financing provided by banks to profitable
20 companies, such as security interests in tangible assets with readily
21 discernable orderly liquidation value in excess of the loan amount
22 or personal guarantees, shall not be deemed as a qualified
23 investment. Qualified investments determined to be seed or early
24 stage investments shall be increased by 300 percent for purposes
25 of determining if a qualified capital access company meets the
26 investment thresholds in Section 28965.

27 (r) "Seed or early stage investment" means an investment in a
28 company that has a product or service in testing or pilot production
29 that may or may not be commercially available. The company may
30 or may not be generating revenues and may have been in business
31 less than three years at the time of investment.

32 (s) "State" means the State of California.

33 (t) "State premium tax liability" means any liability incurred
34 by an insurance company under the provisions of Part 7
35 (commencing with Section 12001) of Division 2 of the Revenue
36 and Taxation Code.

37 28962. (a) A participating investor shall earn an investment
38 tax credit against its state premium tax liability equal to 100 percent
39 of the investment tax credit allocated to the participating investor
40 under Section 28964. The participating investor's investment tax

1 credit shall be earned and vested upon making its investment in
2 the qualified capital access company. Beginning January 1, 2013,
3 a participating investor may claim the investment tax credit as
4 follows:

5 (1) In tax years 2014, 2015, 2016, and 2017, an amount equal
6 to 15 percent of the investment tax credit allocated to the
7 participating investor.

8 (2) In tax years 2018, 2019, 2020, and 2021, an amount equal
9 to 10 percent of the investment tax credit allocated to the
10 participating investor.

11 (b) No participating investor's investment tax credit for any
12 taxable year shall exceed the participating investor's state premium
13 tax liability for that year. If the amount of the investment tax credit
14 determined under this section for any taxable year exceeds the
15 state premium tax liability, then the excess shall be an investment
16 tax credit carryover to future taxable years until tax year 2037.
17 Investment tax credits may be used in connection with both final
18 payments and prepayments of a participating investor's state
19 premium tax liability. Investment tax credits may be sold or
20 otherwise transferred by a participating investor to another entity,
21 which may likewise resell or transfer the tax credits, provided that
22 the Franchise Tax Board receives written notification within 30
23 days of any sale or transfer. However, investment tax credits are
24 not refundable.

25 (c) A participating investor claiming an investment tax credit
26 under this section is not required to pay any additional retaliatory
27 tax levied as a result of claiming the investment tax credit.

28 (d) A participating investor is not required to reduce the amount
29 of tax pursuant to the state premium tax liability included by the
30 participating investor in connection with ratemaking for any
31 insurance contract written in this state because of a reduction in
32 the participating investor's tax liability based on the investment
33 tax credit allowed under this section.

34 (e) If the taxes paid by a participating investor with respect to
35 its state premium tax liability constitute a credit against any other
36 tax that is imposed by this state, the participating investor's credit
37 against the other tax shall not be reduced by virtue of the reduction
38 in the participating investor's tax liability based on the investment
39 tax credit allowed under this section.

1 28963. (a) The Business, Transportation and Housing Agency,
2 in consultation with the Franchise Tax Board, shall provide a
3 standardized format for persons attempting to qualify as a qualified
4 capital access company.

5 (b) An applicant for qualification is required to do all of the
6 following:

7 (1) File an application with the Business, Transportation and
8 Housing Agency.

9 (2) Pay a nonrefundable application fee of seven thousand five
10 hundred dollars (\$7,500) at the time of filing the application, to
11 be deposited in the Economic Development Fund.

12 (3) Submit, as part of its application, an audited balance sheet
13 that contains an unqualified opinion of an independent certified
14 public accountant issued not more than 60 days before the
15 application date that states that the applicant has an equity
16 capitalization of five million dollars (\$5,000,000) or more in the
17 form of unencumbered cash, marketable securities, or other liquid
18 assets.

19 (c) The Business, Transportation and Housing Agency and the
20 Franchise Tax Board shall review the organizational documents
21 of each applicant for certification and determine whether the
22 applicant has satisfied the requirements of this division.

23 (d) Within 30 days after the receipt of an application, the
24 Business, Transportation and Housing Agency shall issue the
25 certification or refuse the certification and communicate in detail
26 to the applicant the grounds for refusal, including suggestions for
27 the removal of those grounds.

28 (e) The Business, Transportation and Housing Agency shall
29 begin accepting applications to become a qualified capital access
30 company by January 31, 2013. All applications must be submitted
31 to the agency no later than October 1, 2013.

32 28964. (a) The Business, Transportation and Housing Agency,
33 in consultation with the Franchise Tax Board, shall provide a
34 standardized format for a qualified capital access company to apply
35 for the investment tax credits.

36 (b) Applications shall contain the information as required by
37 the Franchise Tax Board and the Business, Transportation and
38 Housing Agency, including statements regarding the ability to
39 obtain the required investment commitments. Each qualified capital
40 access company shall submit irrevocable investment commitments

from participating investors and qualified capital access company private investors in an aggregate amount equal to at least the base investment amount not later than November 30, 2013. Qualified capital access companies that are awarded investment tax credits under this chapter based on the asserted ability to raise the required capital shall be subject to a fifty-thousand-dollar (\$50,000) penalty for failure to perform. The proceeds from the penalty shall be deposited into the Economic Development Fund to further the state's economic development efforts.

(c) (1) The Franchise Tax Board and the Business, Transportation and Housing Agency, in consultation with the Treasurer, shall review the applications and award the investment tax credits to capital access companies based on the overall strength of their applications using all of the following criteria:

(A) (i) The applicant has at least two investment managers with five or more years of investment experience.

(ii) The applicant has been based, as defined by having a principal office, in the state for at least five years or has at least five years of experience in investing primarily in California-domiciled companies.

(iii) The applicant's proposed investment strategy for achieving transformational economic development outcomes through focused investments of capital in seed or early stage companies with high-growth potential.

(iv) The applicant's demonstrated ability to lead investment rounds, advise and mentor entrepreneurs, and facilitate follow-on investments.

(B) Qualified capital access companies that do not meet the criteria in clause (ii) of subparagraph (A) may submit a joint application with an entity that meets the criteria set out in clause (ii) of subparagraph (A) and that application shall be judged based on the combined attributes of the joint application.

(2) The awarding of investment tax credits shall be at the sole discretion of the Franchise Tax Board and the Secretary of Business, Transportation and Housing.

(d) The aggregate amount of investment tax credits to be allocated to all participating investors of qualified capital access companies under this chapter shall not exceed two hundred million dollars (\$200,000,000). The investment tax credits will be awarded in twenty-million-dollar (\$20,000,000) allocations. No qualified

1 capital access company, on an aggregate basis with its joint
2 applicants, may apply for more than two twenty-million-dollar
3 (\$20,000,000) allocations. No participating investor, on an
4 aggregate basis with its affiliates, may be allocated more than 25
5 percent of the maximum amount of investment tax credits
6 authorized hereunder, regardless of whether the claim is made in
7 connection with one or more than one qualified capital access
8 company.

9 (e) The qualified capital access company shall receive, no later
10 than December 31, 2013, a written notice from the Business,
11 Transportation and Housing Agency stating whether or not it has
12 been approved as a qualified capital access company and, if
13 applicable, stating the amount of its investment tax credit
14 allocation.

15 28965. (a) (1) To maintain its certification, a qualified capital
16 access company shall make qualified investments, as follows:

17 (A) Within two years after the allocation date, a qualified capital
18 access company shall have invested an amount equal to at least
19 50 percent of its base investment amount in qualified investments.

20 (B) Within three years after the allocation date, a qualified
21 capital access company shall have invested an amount equal to at
22 least 70 percent of its base investment amount in qualified
23 investments.

24 (C) Within four years after the allocation date, a qualified capital
25 access company shall have invested an amount equal to at least
26 80 percent of its base investment amount in qualified investments.

27 (D) Within six years or any year thereafter the allocation date,
28 a qualified capital access company shall have invested an amount
29 equal to at least 90 percent of its base investment amount in
30 qualified investments.

31 (2) Failure to meet the performance measures set out in
32 paragraph (1) during any calendar year shall result in a
33 two-hundred-fifty-thousand-dollar (\$250,000) penalty to be
34 imposed against the qualified capital access company. The proceeds
35 from the penalty shall be deposited into the Economic Development
36 Fund. Funds related to the investment tax credit shall not be used
37 to pay the penalty.

38 (b) Prior to making a proposed qualified investment in a specific
39 business, a qualified capital access company shall request from
40 the Business, Transportation and Housing Agency a written

1 determination that the proposed investment will qualify as a
2 qualified investment in a qualified business or, if applicable, as a
3 seed or early stage investment. The agency shall notify a qualified
4 capital access company within 10 business days from the receipt
5 of a request of its determination. If the agency fails to notify the
6 qualified capital access company of its determination within 10
7 business days, the proposed investment will be deemed to be a
8 qualified investment in a qualified business and, if applicable, as
9 a seed or early stage investment. If the agency determines that the
10 proposed investment does not meet the definition of a qualified
11 investment, qualified business, or seed or early stage investment,
12 the department may nevertheless consider the proposed investment
13 a qualified investment, or a seed or early stage investment and, if
14 necessary, consider the business a qualified business, if the agency
15 determines that the proposed investment will further state economic
16 development.

17 (c) All designated capital not invested in qualified investments
18 by a qualified capital access company shall be held in an escrow
19 account maintained by the state and administered through the
20 Business, Transportation and Housing Agency.

21 (d) A qualified capital access company may not invest more
22 than 15 percent of its designated capital in any one qualified
23 business without the specific approval of the Business,
24 Transportation and Housing Agency.

25 (e) Any amounts that have not been invested by the qualified
26 capital access company at the end of the investment period shall
27 be forfeited and paid to the state for deposit in the Economic
28 Development Fund.

29 (f) No qualified capital access company shall sell any interest
30 in a qualified business to an affiliate unless the qualified capital
31 access company has first obtained written authorization for the
32 sale from the Business, Transportation and Housing Agency.

33 28966. An insurance company or affiliate of an insurance
34 company shall not, directly or indirectly, do any of the following:

35 (a) Beneficially own, whether through rights, options,
36 convertible interest, or otherwise, 15 percent or more of the voting
37 securities or other voting ownership interest of a qualified capital
38 access company.

39 (b) Manage a qualified capital access company (other than
40 exercising remedies for default).

1 (c) Control the direction of investments for a qualified capital
2 access company.

3 28967. Qualified distributions from a qualified capital access
4 company may be made at any time. Distributions other than
5 qualified distributions from a qualified capital access company
6 may be paid out annually or upon designated liquidity events as
7 established by the qualified capital access company. Distributions
8 other than qualified distributions may not reduce the base
9 investment amount during any calendar year. The profit share
10 percentage shall be paid to the state in the same time and manner
11 as all other distributions as provided in Section 28968. Those
12 payments shall be deposited into the General Fund or the Economic
13 Development Fund as provided in Section 28968, as directed by
14 the Secretary of Business, Transportation and Housing. Investment
15 capital liquidated during a liquidity event shall be given a one-year
16 redeployment period for purposes of calculating the investment
17 thresholds in Section 28965.

18 28968. (a) (1) At any time that the qualified capital access
19 company makes distributions of distributable cash, it shall make
20 the distributions in the following profit share percentages:

21 (A) First, 75 percent of distributable cash to the private investors,
22 in proportion to their respective percentage interest, and 25 percent
23 to the state, until each private investor has received cumulative
24 distributions equal to 100 percent of his or her capital contributions.
25 The amount distributed to the state shall be deposited in the General
26 Fund.

27 (B) Second, 100 percent of distributable cash to the state, until
28 it has received 100 percent of its tax credit revenue loss attributable
29 to the qualified capital access company. This amount shall be
30 deposited in the General Fund.

31 (C) Third, 20 percent of distributable cash to the qualified capital
32 access company manager, and 80 percent of distributable cash
33 dividend equally between the state and the private investors in
34 accordance with their respective percentage interest. The amount
35 distributed to the state shall be deposited in the Economic
36 Development Fund.

37 (2) Losses shall be allocated so that 75 percent of realized losses
38 are allocated to the state, and 25 percent are allocated to the private
39 investors in proportion to their respective percentage interest, until

1 distributions of distributable cash has restored the capital accounts
2 of the private investors to zero.

3 (b) The qualified capital access company and the state shall
4 structure the qualified distributions and distributions of
5 distributable cash and final distributions in a manner that minimizes
6 any related federal tax obligation. To the extent that the profit share
7 distribution to qualified capital access company private investors
8 is less than the state's share, pursuant to the profit share percentage,
9 due to federal income tax liabilities, the final distribution may be
10 adjusted to equalize the post-tax profit share payments made during
11 the investment period.

12 28969. (a) Each qualified capital access company shall report
13 all of the following to the Business, Transportation and Housing
14 Agency:

15 (1) As soon as practicable, but no later than 30 days after the
16 receipt of designated capital:

17 (A) The name of each participating investor from which the
18 designated capital was received, including the participating
19 investor's insurance tax identification number.

20 (B) The amount of each participating investor's investment of
21 designated capital.

22 (C) The date on which the designated capital was received.

23 (2) On an annual basis, on or before January 31 of each year:

24 (A) The amount of the qualified capital access company's
25 remaining uninvested designated capital at the end of the
26 immediately preceding taxable year.

27 (B) Whether or not the qualified capital access company has
28 invested more than 15 percent of its total designated capital in any
29 one business.

30 (C) All qualified investments that the qualified capital access
31 company has made in the previous taxable year, including the
32 number of employees of each qualified business in which it has
33 made investments at the time of the investment and as of December
34 1 of the preceding taxable year.

35 (D) For any qualified business where the qualified capital access
36 company no longer has an investment, the qualified capital access
37 company must provide employment figures for that company as
38 of the last day before the investment was terminated.

39 (3) Other information that the agency may reasonably request
40 that will help the agency ascertain the impact of the qualified

1 capital access company program, both directly and indirectly, on
2 the economy of the state.

3 (4) Within 180 days of the close of its fiscal year, annual audited
4 financial statements of the qualified capital access company, which
5 must include the opinion of an independent certified public
6 accountant.

7 (5) An “agreed upon procedures report” or equivalent regarding
8 the operations of the qualified capital access company.

9 (b) A qualified capital access company shall pay to the Business,
10 Transportation and Housing Agency an annual, nonrefundable
11 certification fee of five thousand dollars (\$5,000) on or before
12 April 1, or ten thousand dollars (\$10,000) if later. No annual
13 certification fee is required if the payment date is within six months
14 of the date a qualified capital access company is first certified by
15 the agency.

16 (c) Upon satisfying of the requirements of paragraph (1) of
17 subdivision (a) of Section 28965, a qualified capital access
18 company shall provide notice to the Business, Transportation and
19 Housing Agency, and the agency shall, within 60 days of receipt
20 of the notice, either confirm that the qualified capital access
21 company has satisfied the requirement of that paragraph as of that
22 date or provide notice of noncompliance and an explanation of
23 any existing deficiencies. If the agency does not provide such
24 notification within 60 days, the qualified capital access company
25 shall be deemed to have met the requirement of that paragraph.

26 (d) (1) For the purposes of this subdivision, “key person” means
27 either of the following:

28 (A) The qualified capital access company’s investment managers
29 listed in the qualified capital access company’s application under
30 Section 28964.

31 (B) The individuals on the list of investment managers as has
32 been previously approved by the Business, Transportation and
33 Housing Agency under paragraph (2) or otherwise.

34 (2) A qualified capital access company’s success shall be
35 deemed to depend, in particular, on the qualified capital access
36 company’s key person or persons. On or before July 1, 2013, each
37 qualified capital access company shall provide to the Business,
38 Transportation and Housing Agency a description of the qualified
39 capital access company’s procedure for choosing a successor
40 should any key person die, become legally incapacitated, or cease

1 to be involved in the management of the qualified capital access
2 company for more than 90 consecutive days. In the event that a
3 majority of key persons do die, become legally incapacitated, or
4 cease to be involved in the management of the qualified capital
5 access company for more than 90 consecutive days for any reason,
6 the Secretary of Business, Transportation and Housing, in
7 consultation with the Franchise Tax Board and the Treasurer or
8 any other appropriate professional adviser, shall determine whether
9 a new individual or individuals will be able to assume the role of
10 key person so that the qualified capital access company's
11 performance will remain unimpaired. If the secretary determines,
12 in the secretary's sole discretion, that the key person cannot be
13 adequately replaced and the qualified capital access company's
14 performance therefor will be impaired, then any funds not already
15 invested by the qualified capital access company shall be deposited
16 into an escrow account unless the Franchise Tax Board certifies,
17 that the total amount of payments deposited in the General Fund
18 under this division equals or exceeds the total amount of revenue
19 foregone pursuant to the credits used as provided in Section 28962.
20 If the Franchise Tax Board has made that determination, then any
21 funds not already invested by the qualified capital access company
22 shall be deposited into the Economic Development Fund to further
23 support the state's economic development efforts.

24 28970. (a) The Business, Transportation and Housing Agency
25 shall conduct an annual review of each qualified capital access
26 company to determine if it is abiding by the requirements of the
27 program and to ensure that no investments have been made in
28 violation of this division. The cost of the annual review shall be
29 paid by each qualified capital access company according to a
30 reasonable fee schedule adopted by the agency.

31 (b) The agency shall provide the qualified capital access
32 company a summary of findings including any areas of
33 noncompliance. The qualified capital access company shall have
34 60 days to cure any areas of noncompliance. Failure to cure the
35 areas of noncompliance within 60 days shall result in a penalty of
36 ten thousand dollars (\$10,000) per day until the noncompliance is
37 cured. The proceeds from the penalty shall be deposited into the
38 Economic Development Fund to further the state's economic
39 development efforts. Funds related to the investment tax credit
40 shall not be used to pay the penalty imposed under this section.

1 (c) To promote openness and transparency, a copy of each
2 annual report received by the Business, Transportation and Housing
3 Agency pursuant to this section shall be posted on the agency's
4 Internet Web site.

5 (d) The Business, Transportation and Housing Agency shall
6 provide the Treasurer, upon request, a copy of any written findings
7 made in connection with the annual review required under
8 subdivision (a) and a copy of the summary of findings provided
9 to the qualified capital access company pursuant to subdivision
10 (b).

11 28971. The Economic Development Fund is hereby created in
12 the State Treasury. Money in the fund from application fees
13 pursuant to paragraph (2) of subdivision (b) of Section 28963 and
14 from recertification fees pursuant to subdivision (b) of Section
15 28969 shall be available, upon appropriation by the Legislature,
16 for administration of this division. Money in the fund from
17 penalties imposed pursuant to this division or from qualified
18 distributions pursuant to Section 28968 shall be available, upon
19 appropriation by the Legislature, to further the state's economic
20 development efforts, as specified by the Legislature.